48A C.J.S. Judges § 182

Corpus Juris Secundum | August 2023 Update

Judges
Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

H. Particular Judges

1. Successor Judges

b. Authority to Reconsider and Change Predecessor's Decision

§ 182. Limits on authority pertaining to issues of fact depending on credibility

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Judges 32

Where a predecessor judge's ruling is on an issue which is purely one of fact involving a determination of the credibility of witnesses, it has been held that the successor should not reconsider the prior ruling but instead should grant a new trial.

Courts which take the view that a successor judge may reconsider and set aside or otherwise change a predecessor's interlocutory rulings, findings of fact, and conclusions of law nevertheless recognize some limitations on the successor's ability to overrule or change the rulings and decisions of a predecessor.[1] Thus, where the predecessor's ruling is on an issue which is purely one of fact[2] involving a determination of the credibility of witnesses,[3] it has been held that the successor should not reconsider the prior ruling but instead should exercise discretion to grant a new trial.[4]

The limitation on a successor judge's authority to modify findings of fact involving the credibility of witnesses rests on the ground that where witnesses give their testimony in the presence and hearing of a particular judge, that judge is better able to determine the worth and weight of the testimony than one who has not seen or heard the witnesses on the stand.[5] A successor judge does, however, retain the authority to reconsider and to amend findings of fact where there is no testimony of witnesses requiring the evaluation of credibility or where the findings are based on a transcribed record alone, unaided by the appearance or demeanor of any witness.[6]

Similarly, where a motion to vacate a predecessor's decision requires review only of questions of law or uncontested fact, the successor judge's reconsideration of the decision is appropriate.[7]

Footnotes

1 Alaska—Beal v. Beal, 209 P.3d 1012 (Alaska 2009).

Cal.—Alvarez v. Superior Court, 183 Cal. App. 4th 969, 107 Cal. Rptr. 3d 671 (1st Dist. 2010).

Minn.—Kornberg v. Kornberg, 542 N.W.2d 379 (Minn. 1996).

W. Va.—Coleman v. Sopher, 201 W. Va. 588, 499 S.E.2d 592 (1997).

2 W. Va.—Coleman v. Sopher, 201 W. Va. 588, 499 S.E.2d 592 (1997).

3 Fla.—Williams v. Florida Parole Com'n, 977 So. 2d 783 (Fla. 1st DCA 2008).

Minn.—Kornberg v. Kornberg, 542 N.W.2d 379 (Minn. 1996).

N.D.—Holzer v. Jochim, 557 N.W.2d 57 (N.D. 1996).

4 W. Va.—Coleman v. Sopher, 201 W. Va. 588, 499 S.E.2d 592 (1997).

5 Minn.—Kornberg v. Kornberg, 542 N.W.2d 379 (Minn. 1996).

6 Minn.—Kornberg v. Kornberg, 542 N.W.2d 379 (Minn. 1996).

7 W. Va.—Tennant v. Marion Health Care Foundation, Inc., 194 W. Va. 97, 459 S.E.2d 374 (1995).

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